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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

## DEMETRIQUIS STEWART

*Petitioner,*

VS.

12 || ROBERT LEGRAND, et al..

### *Respondents.*

3:13-cv-00098-LRH-WGC

ORDER

15 Petitioner has filed a *pro se* petition for writ of habeas corpus, pursuant to 28 U.S.C. § 2254  
16 (ECF #1). However, petitioner has failed to submit an application to proceed *in forma pauperis* or pay  
17 the filing fee. Accordingly, this matter has not been properly commenced. 28 U.S.C. § 1915(a)(2) and  
18 Local Rule LSR1-2.

19        Thus, the present action will be dismissed without prejudice to the filing of a new petition in a  
20 new action with either the full filing fee or an application to proceed *in forma pauperis* on the proper  
21 form with both an inmate account statement for the past six months and a properly executed financial  
22 certificate.

23 It does not appear from the papers presented that a dismissal without prejudice will materially  
24 affect a later analysis of any timeliness issue with regard to a promptly filed new action.<sup>1</sup>

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With regard to timeliness, in this petition, petitioner states that he is challenging a judgment of conviction dated December 19, 2006, and that the Nevada Supreme Court decided his appeal from the denial of his post-conviction petition for relief or petition for writ of habeas corpus on February 1, 2013 (ECF #1-1). Thus it does not appear that a dismissal of (continued...)

1       **IT IS THEREFORE ORDERED** that this action is **DISMISSED** without prejudice to the  
2 filing of a new petition in a new action with either the full filing fee or a properly completed application  
3 form to proceed *in forma pauperis*.

4       **IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**, as jurists of  
5 reason would not find the court's dismissal of this improperly commenced action without prejudice to  
6 be debatable or incorrect.

7       **IT IS FURTHER ORDERED** that the Clerk shall send petitioner two copies each of an  
8 application form to proceed *in forma pauperis* for incarcerated persons and a noncapital Section 2254  
9 habeas petition form, one copy of the instructions for each form, and a copy of the papers that he  
10 submitted in this action.

11           **IT IS FURTHER ORDERED** that the Clerk shall **ENTER JUDGMENT** accordingly and  
12 close this case.

13 DATED this 14th day of March, 2013.

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**LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE**

<sup>1</sup>(...continued)

26 the present petition without prejudice will materially affect an analysis of any timeliness or exhaustion issue as to a promptly  
27 filed later petition. Nor does it appear from the available records that a dismissal of this improperly commenced action  
28 without prejudice necessarily will be with prejudice in effect. Petitioner at all times remains responsible for properly  
commencing a timely-filed federal habeas action.